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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

Docket ID OCC-2011-0019

RIN 1557-AD36

Alternatives to the Use of External Credit Ratings in the Regulations of the OCC

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice of proposed rulemaking; correcting amendment.

SUMMARY: This notice of proposed rulemaking makes technical corrections to the notice of proposed rulemaking concerning alternatives to the use of external credit ratings that was published on November 29, 2011 to correct a mischaracterization of section 939(d) of the Dodd-Frank Act.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

On November 29, 2011, the Office of the Comptroller of the Currency (OCC) published a notice of proposed rulemaking (NPRM) seeking comment on a proposal to revise its regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency

deposits to replace references to credit ratings with alternative standards of creditworthiness.¹

The OCC also sought comment on proposed amendments to its regulations pertaining to financial subsidiaries of national banks to better reflect the language of the underlying statute, as amended by section 939(d) of the Dodd-Frank Act.

The National Bank Act currently permits a national bank that is one of the 100 largest insured banks to control a financial subsidiary, directly or indirectly, or to hold an interest in a financial subsidiary only if the bank has at least one issue of outstanding debt rated in one of the top three investment grade categories by a nationally recognized statistical rating organization (NRSRO).² A national bank that is one of the second 50 largest insured banks may either satisfy this requirement or may satisfy such other criteria as the Secretary of the Treasury and the Federal Reserve Board may establish jointly by regulation. This creditworthiness requirement does not apply to national banks that are not among the largest 100 insured banks.

Section 939(d) of the Dodd-Frank Act amended the creditworthiness requirement to remove the reference to nationally recognized statistical rating organization (NRSRO) ratings and to make other revisions to the provision. Thus, effective on July 21, 2012, a national bank that is one of the 100 largest insured banks may control a financial subsidiary, directly or indirectly, or hold an interest in a financial subsidiary only if the bank has not fewer than one issue of outstanding debt that meets such standards of creditworthiness or other criteria as the Secretary of the Treasury and the Federal Reserve Board may jointly establish.

The proposed revisions to the OCC's rules at 12 CFR 5.39 in the November 29 NPRM inaccurately characterized the creditworthiness requirement, leaving the erroneous impression that only a national bank that is among the 100 largest insured banks could control or hold an

¹ 76 FR 73626 (November 29, 2011).

² 12 U.S.C. 24a.

interest in financial subsidiary. This notice makes a technical correction to the regulatory text in the NPRM so that the characterization of the Dodd-Frank Act amendment is accurate. As is the case under current law, the creditworthiness requirement does not apply to an insured depository institution that is not among the largest 100 insured depository institutions and therefore does not affect the ability of such an institution to control or hold an interest in a financial subsidiary. The technical correction made in this notice also does not affect the content or substance of the alternative standards of creditworthiness in the November 29 NPRM or in the supervisory guidance that was published at the same time.

Regulatory Analysis

A. Paperwork Reduction Act

The November 29 notice of proposed rulemaking would amend several regulations for which the OCC currently has approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520) (OMB Control Nos. 1557-0014; 1557-0190; 1557-0120; 1557-0205). Neither the amendments in the November 29 proposal, nor this revision to it, introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has previously approved. Therefore, no additional OMB PRA approval is required at this time.

B. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act,³ (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to

³ 5 U.S.C. 605(b).

\$175 million) and publishes its certification and a short, explanatory statement in the Federal Register along with its rule.

The November 29 proposal would affect all 578 small national banks and all 288 small federally chartered savings associations.⁴ However, because banks have long been expected to maintain a risk management process to ensure that credit risk is effectively identified, measured, monitored, and controlled, most if not all of the institutions affected by the proposed rule already engage in appropriate risk management activity. Although the proposed rule will affect a substantial number of small banks and federally chartered savings associations, it will not have a significant effect on a substantial number of those institutions. Therefore, the OCC certifies that the proposed rule would not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined that its proposed rule would not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

⁴ All totals are as of June 30, 2011.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping, requirements, Securities

Authority and Issuance

For the reasons stated in the preamble, the Office of the Comptroller of the Currency is proposing to amend Part 5 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

2. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* , 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

3. In section 5.39, revise paragraphs (g)(3) through (4) and (j)(2) to read as follows:

§ 5.39 Financial subsidiaries.

* * * * *

(g) * * *

(3) If the national bank is one of the 100 largest insured banks, determined on the basis of the bank's consolidated total assets at the end of the calendar year, the bank has not fewer than one issue of outstanding debt that meets such standards of creditworthiness or other criteria as the Secretary of the Treasury and the Federal Reserve Board may jointly establish pursuant to Section 5136A of title LXII of the Revised Statutes (12 U.S.C. 24a).

(4) Paragraph (g)(3) does not apply if the financial subsidiary is engaged solely in activities in an agency capacity.

* * * * *

(j) * * *

(2) Eligible debt requirement. A national bank that does not continue to meet the qualification requirement set forth in paragraph (g)(3) of this section, applicable where the bank's financial subsidiary is engaged in activities other than solely in an agency capacity, may not directly or through a subsidiary, purchase or acquire any additional equity capital of any such financial subsidiary until the bank meets the requirement in paragraph (g)(3) of this section. For purposes of this paragraph (j)(2), the term “equity capital” includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation, or interpretation applicable to the subsidiary.

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Dated: December 2, 2011

By the Office of the Comptroller of the Currency

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

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